

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TAMMY L. HILL,

Civ. No. 07-6024-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

For the reasons that follow, the Commissioner's motion to remand this matter for further administrative proceedings is granted.

The administrative law judge (ALJ) stated clear and convincing reasons supported by substantial evidence to give little weight to plaintiff's statements. He noted that objective medical evidence does not support the sudden decline in plaintiff's medical condition that allegedly caused her to quit her job and file an application for benefits on the same day as her husband. (Tr. 15, 18). The ALJ noted that plaintiff held

her job for 90 days after completing vocational rehabilitation. (Tr. 21, 70). He cited medical records documenting symptom magnification and intermittent wheelchair use without prescription. (Tr. 19). He noted the unremarkable Holter test result despite plaintiff's complaint of daily palpitations. (Tr. 22). The decision references Dr. Sullivan's rating of 65 for plaintiff's global assessment of functioning. (Tr. 23, 469). The ALJ cited medical reports evincing plaintiff's inconsistent statements regarding her abilities to groom, dress, perform self care and ride horses. (Tr. 23, 466, 468, 475). The ALJ also noted plaintiff's activities of crochet and home-schooling despite her claim of disability from ganglion cysts, carpal tunnel syndrome and fibromyalgia. (Tr. 24, 124-25, 676). The possibility that plaintiff sought Vicodin from Dr. Stowell in violation of her narcotic agreement with Dr. Webb is noted in the decision and documented in Dr. Stowell's report. (Tr. 21, 542).

The parties agree that the ALJ failed to include handling and fingering limitations in the hypothetical question posed to the Vocational Expert (VE). Further proceedings before the ALJ are necessary to resolve an ambiguity in the decision. Though he purported to adopt Dr. Pritchard's Physical Residual Functional Capacity (RFC) Assessment, including that plaintiff "should not handle or finger constantly," the ALJ's RFC is more limited, prohibiting frequent bilateral handling or fingering. (Tr. 17,

20, 502). The VE testified that a limitation to occasional use of the hands for gross and fine manipulation, along with limitations identified by the ALJ, would preclude employment in past jobs held by plaintiff. (Tr. 717). The VE further testified that the need to rest both hands for one half hour after an hour of use, when coupled with the limitations posed by the ALJ, would not be competitive. (Tr. 718).

On remand, the ALJ shall adduce further VE testimony and issue a new decision clarifying his assessment of plaintiff's RFC. The ALJ is of course free to further develop the record as he deems appropriate.

Conclusion

Based on the foregoing, the decision of the Commissioner is reversed. This matter is remanded to the Commissioner for further proceedings before the ALJ.

IT IS SO ORDERED.

DATED this 12th day of December, 2007.

s/ Michael R. Hogan
United States District Judge